

Congress of the United States
Washington, DC 20515

September 29, 2020

The Honorable William Barr
Attorney General
Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

Ms. Regina Lombardo
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Ave NE
Washington, DC 20226

Dear Attorney General Barr and Acting Director Lombardo:

We write regarding our June 16, 2020 letter, where we expressed grave concern about the Bureau of Alcohol, Tobacco, Firearms and Explosives' ("ATF") efforts to enforce arbitrary, non-public determinations—particularly with respect to firearms equipped with arm braces—and asked several questions about the agency's practices. So far, neither ATF nor the Department of Justice ("DOJ") has responded to our questions. Ignoring this problem will not make it go away, and we respectfully request a full and substantial response.

Although we have not received a response, we are encouraged by efforts taken by DOJ to temper ATF's rogue agenda of criminalizing firearms affixed with arm braces. One such positive effort is the issuance of a new regulation designed to ensure "that Americans have fair notice of their obligations" by prohibiting all DOJ components from "issu[ing] guidance documents that create binding standards by which the Department will determine compliance with existing regulatory or statutory requirements."¹ In addition, we are aware that DOJ has placed a prohibition on further ATF civil adjudications related to arm brace affixed firearms, pending further review of the matter by DOJ.

Despite these steps, it has come to our attention that ATF has decided to pursue, in secret, a "workaround" to DOJ's countermeasures that is hostile to citizens' Second Amendment rights and to due process. Blocked from pursuing its rogue agenda through civil enforcement letters, it appears that ATF is now exploiting its *criminal* enforcement powers to threaten small business owners

¹ Prohibition on the Issuance of Improper Guidance Documents Within the Justice Department, 85 Fed. Reg. 50951, 50952–53 (Aug. 19, 2020) (Interim final rule; request for comments). We understand that ATF has been incorrectly interpreting this regulation to halt most industry adjudications, even those that are unrelated to arm braces. Certain services that were once provided to make adjudications more efficient are now being considered by ATF to be improper "guidance." In fact, the regulation was designed to increase transparency in the use of guidance and to ensure that any binding standards are promulgated only after notice and opportunity for comment. The regulation does not prevent ATF from applying properly promulgated public standards in adjudications, and we urge DOJ to correct ATF's misreading of this regulation.

around the country into complying with made-up and shifting criteria for determining the difference between a pistol and a short-barreled rifle. Furthermore, despite claiming that the classification process is voluntary, ATF has begun strong-arming companies into submitting brace-affixed firearms for classification.

These in terrorem tactics cannot be allowed to proceed. As we have previously stressed, the use of unpublished or non-existent criteria in ATF enforcement efforts is repugnant to the rule of law. And ATF's decision to shift from civil to criminal enforcement only exacerbates this problem, as it threatens law-abiding citizens with criminal penalties despite the absence of any advanced warning. This is particularly troubling where, as here, enforcement trenches on these citizens' fundamental Second Amendment rights.

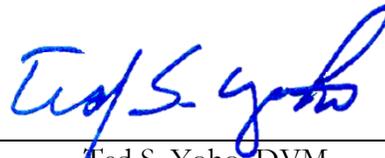
We again request that ATF immediately cease abusing its enforcement authority by threatening law-abiding small business owners and the now estimated 3–4 million Americans who own firearms equipped with arm braces. These devices are widely used by many Americans, and they are particularly popular among veterans—especially veterans with service-connected disabilities. For these men and women to have served our nation, and then to be arbitrarily deprived of their constitutional rights, is shameful, unconscionable, and wrong.

Thank you for your attention to this matter. We respectfully request your response to the questions contained in our June 16, 2020 letter no later than **Friday, October 9**.

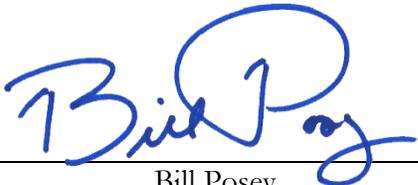
Sincerely,



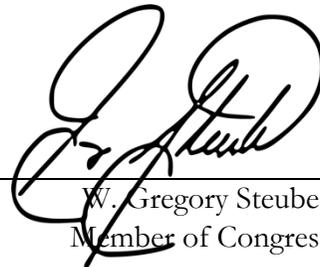
Matt Gaetz
Member of Congress



Ted S. Yoho, DVM
Member of Congress



Bill Posey
Member of Congress



W. Gregory Steube
Member of Congress

CC:

The Honorable Jeffrey Rosen
Deputy Attorney General